UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ADAM LEVINE,	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 3:02 CV 81 (CFD)
	:	
HARTFORD LIFE INSURANCE CO.,	:	
Defendant.	:	

RULING ON MOTION TO REMAND AND MOTION TO DISMISS

I. Introduction

In this action, plaintiff Adam Levine ("Levine") claims that he is entitled to the proceeds of a group life insurance policy issued by defendant Hartford Life Insurance Company ("Hartford") to United News & Media and Their Affiliates ("United News"). United News employed policy participant and decedent Robin Eileen Steinberg ("Ms. Steinberg"), Levine's former wife. Levine originally filed the complaint against Hartford in Connecticut Superior Court, alleging breach of contract, intentional infliction of emotional distress, breach of the covenant of good faith and fair dealing, and violations of the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. §§ 42-110 et seq. ("CUTPA"), and the Connecticut Unfair Insurance Practices Act, Conn. Gen. Stat. §§ 38a-815 et seq. ("CUIPA"). On January 14, 2002, Hartford removed the state court action to federal court pursuant to 28 U.S.C. § 1441 on the grounds that the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 et seq. ("ERISA"), preempts Levine's state law claims and provides a basis for federal question jurisdiction under 28 U.S.C. § 1331. Pending are Hartford's motion to dismiss [Doc. # 6] and Levine's motion

to remand [Doc. # 8]. For the following reasons, the motion to dismiss is granted and the motion to remand is denied.

II. Background

The United News group life insurance policy at issue in this case is Policy Number GL-208118 (the "Policy"). There appears to be no dispute that United News established and maintains the policy pursuant to ERISA, 29 U.S.C. § 1003(a)(1), and it includes a "statement of ERISA Rights." (Policy at 28-33.)

As explained above, Ms. Steinberg was an employee of a United News affiliate and was insured under Policy Number GL-208118. She died on July 17, 2001. Levine, Ms. Steinberg's former husband, and Harriette and David Steinberg, Ms. Steinberg's parents, have filed competing claims for the proceeds of the Policy.[1] Harriette and David Steinberg, however, are not parties to this action. Hartford has retained the proceeds of the Policy until the competing claims are resolved.

III. Discussion

A. Motion to remand

Levine argues that this action should be remanded to Connecticut Superior Court because the complaint contains only state law claims and thus cannot support federal question jurisdiction under 28 U.S.C. § 1331.[2] Responding to statements made in the notice of removal filed by Hartford, Levine also argues that ERISA preemption cannot

---

[1]Levine and the Steinbergs also have filed competing claims to an employee benefit plan, and they are litigating that dispute in state court in New York, where they all are residents.

[2]Neither party addresses diversity jurisdiction.

provide a basis for removal because the type of preemption involved in this case is conflict, rather than complete, preemption.

A defendant may remove an action originally filed in state court only if the case originally could have been filed in federal court, see 28 U.S.C. § 1441(a), and the defendant bears the burden of showing the propriety of that removal, see Grimo v. Blue Cross/Blue Shield, of Vermont, 34 F.3d 148, 151 (2d Cir. 1994). To determine whether federal question jurisdiction can be a basis for removal, courts are guided by the well-pleaded complaint rule, which provides that "federal question jurisdiction exists only when the plaintiff's own cause of action is based on federal law . . . , and only when plaintiff's well-pleaded complaint raises issues of federal law." Marcus v. AT & T Corp., 138 F.3d 46, 52 (2d Cir. 1998) (internal citations omitted). Thus, a complaint that includes only state law claims generally cannot be removed to federal court on the basis of federal question jurisdiction.

The complete preemption doctrine, however, is a corollary to the well-pleaded complaint rule. Moscovitch v. Danbury Hosp., 25 F. Supp. 2d 74, 79 (D. Conn. 1998). Under this doctrine, "Congress may so completely preempt a particular area that any civil complaint raising this select group of claims is necessarily federal in character." Metropolitan Life Ins. Co. v. Taylor, 481 U.S. 58, 63 (1987). "Once an area of state law has been completely pre-empted, any claim purportedly based on that pre-empted state law is considered, from its inception, a federal claim, and therefore arises under federal law." Marcus, 138 F.3d at 53 (quoting Caterpillar, Inc. v. Williams, 482 U.S. 386, 393 (1987)). Removal is proper in such cases. Id. More specifically, "ERISA preemption

provides a valid basis for removal jurisdiction only if (1) the state law cause of action is preempted by ERISA, and (2) that cause of action is 'within the scope" of the civil enforcement provisions of ERISA § 502(a), 29 U.S.C. § 1132(a)." Plumbing Indus. Bd., Plumbing Local Union No 1. V. E.W. Howell Co., Inc., 126 F.3d 61, 65 (2d Cir. 1997). "In other words, if a plaintiff's state law claim is within the scope of § 502(a) it is completely preempted regardless of how he has characterized it." Moscovitch, 25 F. Supp. 2d at 79.

Claims that are completely preempted are distinguishable from those involving conflict preemption arising solely from ERISA § 514(a), which provides, in relevant part, that "[e]xcept as provided in subsection (b) of this section, the provisions of [ERISA] shall supercede any and all State laws insofor as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title." 29 U.S.C. § 1144(a).[3] In those cases, conflict preemption serves as a defense to a state action rather than a basis for removal. Moscovitch, 25 F. Supp. 2d at 82-83.

[3]The life insurance policy here appears to be an employee welfare benefit plan within the meaning of ERISA. See 29 U.S.C. § 1002(1) (defining the term, in relevant part, as "any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, [] medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services. . .).

Under Plumbing Industry Board, the first step is to determine if Levine's cause of action is preempted by ERISA. There are two ways that ERISA might preempt a cause of action: first, when a state law refers to ERISA plans "in the sense that the measure acts immediately and exclusively upon ERISA plans or where the existence of ERISA plans is essential to the law's operation," or second, when a state law "has a clear connection with a plan in the sense that it mandates employee benefit structures or their administration or provides alternative enforcement mechanisms." Plumbing Industry Board, 126 F.3d at 67; see also Case v. Hospital of St. Raphael, 38 F. Supp. 2d 207, 208 (D. Conn. 1999). Here, neither CUTPA nor CUIPA refer to ERISA, but these statutes, as well as the common law claims in this case, have a clear connection with a plan because they provide alternative enforcement mechanisms. Case, 38 F. Supp. 2d at 208-09 (holding that contract, emotional distress and CUTPA claims were preempted by ERISA where plaintiff was claiming denial of disability benefits); Fischman v. Blue Cross & Blue Shield of Connecticut, 755 F. Supp. 528, 531 (D. Conn. 1990) (holding that claims under CUIPA are preempted by ERISA where the plaintiff was seeking health care benefits allegedly due under an employee welfare benefit plan).[4]

The second step in determining if ERISA preemption provides a valid basis for removal jurisdiction is to ask whether the cause of action is within the scope of the civil

[4]Although the plaintiff does not raise the point, ERISA contains a savings clause which provides, "[e]xcept as provided in subparagraph (B), nothing in this subchapter shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities." 29 U.S.C. § 1144(b)(2)(A). This Court agrees with those other courts that have concluded that CUIPA does not regulate the business of insurance and thus does not fit within the savings clause. See Fischman, 755 F. Supp. at 531.

enforcement provisions of ERISA § 502(a), 29 U.S.C. § 1132(a). Plumbing Indus. Bd., 126 F.3d at 65. Section 502(a)(1)(B) of ERISA provides that a beneficiary may bring a civil action "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." 29 U.S.C. § 1132(a)(1)(B). State law claims are within the scope of § 502(a) when they "aim to redress, though other means, violations of rules that § 502(a) is designed to enforce." Plumbing Indus. Bd., 126 F.3d at 69-70.

Hartford argues that Levine has brought this action to recover benefits due him under the plan. Levine contends that this action sounds in breach of contract and other related state law counts and is not a claim to the life insurance policy proceeds. Based on this argument, he claims that his claim is merely conflict preempted under §514(a). The complaint indicates, however, that Levine seeks to recover benefits due to him under the terms of the policy at issue. In Count One, for instance, Levine alleges that he is the named beneficiary of the life insurance policy and that "[d]espite demand, the amount of insurance has not been paid." (Compl. ¶¶ 4, 6). Each subsequent count incorporates and builds upon those allegations. Further, as Hartford points out, Levine claims in his Memorandum of Law that he has made a claim for benefits as the beneficiary of the Policy and that Hartford has refused to make payment in accordance with the Policy's terms. Based on the Complaint and these representations, the Court concludes that the plaintiff's state law claims seek to redress principles that § 502(a) was designed to enforce, and therefore the causes of action set forth in Levine's complaint are within the scope of § 502(a)(1)(B).

Levine also argues that he should be able to have this action remanded to state court because the Policy provided that claimants may bring actions in state or federal court. Specifically, it states that "[i]f you have a claim for benefits which is denied or ignored, in whole or in part, you may file suit in a state or federal court." (Policy at 34.) While this provision permits filing in either state or federal court, however, it does not prevent Hartford from removing cases filed in state court. See Zimnoch v. ITT Hartford, No. CIV. A. 99-6594, 2000 WL 283845 (E.D. Pa. Mar. 14, 2000) (concluding, in the context of a policy with identical language, that "[t]he Policy is silent . . . as to defendants choosing to remove any suit filed by plaintiff in state court").

Accordingly, the motion to remand is denied.

B. Motion to dismiss

Hartford argues that this action should not only be dismissed as preempted under ERISA, but also that the CUTPA and CUIPA counts should be dismissed for failure to state a claim.

1. ERISA Preemption

Under § 514(a), ERISA supersedes any and all state laws that relate to any employee benefit plan. 29 U.S.C. § 1144(a). As explained above in reference to the motion to remand, Levin's causes of action are preempted by ERISA. Therefore, the motion to dismiss is granted on this basis.

2. CUTPA and CUIPA

Hartford also maintains that Levine has failed to state claims under CUTPA and CUIPA because he has not alleged a "general business practice." See Conn. Gen. Stat. §

38a-816(6) (stating that a violation of this CUIPA subsection requires proof that unfair settlement practices were committed or performed with such frequency as to indicate a general business practice); Lees v. Middlesex Ins. Co., 643 A.2d 1282, 1285-86 (Conn. 1994) (stating that a general business practice is a requirement for CUTPA claims involving certain insurance contracts based on the public policy embodied in CUIPA). In light of the Court's ruling on the preemption issue, it need not address this basis for dismissal.

V. Conclusion

For the foregoing reasons, Hartford's motion to dismiss [Doc. # 6] is GRANTED and Levine's motion to remand [Doc. # 8] is DENIED. The Clerk is directed to close this case, but the plaintiff shall be permitted within thirty days of the date of this order to refile this action in federal court restating his claims under ERISA. Should Levine file an amended complaint within the specified time period, the Clerk is directed to vacate judgment and restore the action to the active docket. This is without prejudice to the defendant later moving to dismiss for failure to join an indispensable party or for other reasons.

SO ORDERED this ___ day of June 2002, at Hartford, Connecticut.

CHRISTOPHER F. DRONEY
UNITED STATES DISTRICT JUDGE